IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7560 OF 2003

Shri Natha Haribhau Deshmukh : Petitioner

(Orig.Plaintiff)

V/s.

Shri Vasant Nivrutti Ragade & Anr. : Respondents

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Mr.S.V.Pitre for the petitioner.

None for the respondents though served.

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CORAM : S.A. BOBDE, J.
January 17, 2005.

P.C.:

1. Rule, returnable forthwith, in view of the notice for final disposal issued on 12.8.2003.

2. The petitioner who made an application for amendment by which he sought to incorporate the relief of specific performance of a contract has approached this Court in view of the rejection of his amendment.

3. The petitioner filed a suit on 6.3.1996 for an injunction restraining the respondents from obstructing

peaceful possession over land survey no.49/2, situate at village Karanjgaon, taluka Maval. He applied for an amendment on 22.3.1999 seeking specific performance of the contract. This application for amendment has been rejected by the Court on the ground that it is barred by limitation provided by Article 54 of the Limitation Act which requires the plaintiff to sue within three years of the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

4. The learned trial Court has come to the conclusion that the petitioner had notice that the respondents have refused performance of the contract on 28.2.1996 and, therefore, the petitioner ought to have sued for specific performance on or before 28.2.1999.

5. This finding is not sustainable in view of the fact that the petitioner served the notice dated 28.2.1996 calling upon the respondent to comply with the terms of the contract within one month of the receipt of the notice. Obviously, even if the date of the notice is taken into account, the petitioner would have been entitled to seek specific performance within three years i.e. upto 28.2.1999. He has, in fact, sought it earlier

on 22.3.1999. Therefore, the learned trial Court is wrong in assuming that the plaintiff had notice of refusal of the contract on 28.2.1999 i.e. the date of the notice. In this case, it must be construed that the petitioner had notice of the refusal of the contract within one month of 28.2.1996 i.e. the date of the notice or longer i.e. within one month from the date of receipt of the notice.

6. In these circumstances, the impugned order below exh.40 in Regular Civil Suit no.34/96 is hereby set aside. The suit is restored to file. The petitioner's application for amendment at exh.40 dated 22.3.1999 is hereby allowed. The suit shall proceed, in accordance with law.

7. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.